

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LETICIA LUCERO,

Plaintiff,

v.

CENLAR F.S.B., et al.,

Defendants.

No.: 2:13-cv-00602

DECLARATION OF ERNESTO IRURZUN

I, Ernesto Irurzun, declare as follows:

1. I am a Vice President for defendant Bayview Loan Servicing, LLC ("Bayview"). I am over the age of eighteen and am competent to testify as a witness.

2. I have personal knowledge of the matters set forth herein, or the facts set forth herein based on my review of Bayview's business records, which records were made by myself or from information transmitted by a person with knowledge of the event described therein, at or near the time of the event described, and are kept and relied upon in the ordinary course of the regularly conducted business activity of that person and/or Bayview, and it is the regular practice of Bayview to make and maintain such business records.

3. Bayview's role with respect to Plaintiff's loan was that of a sub-servicer for Cenlar, F.S.B. ("Cenlar"), with responsibility for assisting Plaintiff with a loan modification. Bayview's role was not to collect the debt, or process debt payments, or perform any credit reporting. Bayview did not collect or process any payments with respect to Plaintiff's loan, nor did Bayview do any credit reporting with respect to the loan.

4. Bayview's letter to Plaintiff dated February 7, 2013 includes language that Bayview is a "debt collector" and that it was attempting to "collect" a debt. This language is often included in Bayview letters as a safe harbor for compliance under the FDCPA. It is not Bayview's position that it was a "debt collector" with respect to Plaintiff's loan, or that it was attempting to "collect" a debt from Plaintiff. Bayview's role was not to collect the debt, or process debt payments, or perform any credit reporting.

5. Bayview maintains a software system for managing loans. Bayview has a built-in procedure in place to ensure that letters to represented parties are directed to counsel. When Bayview becomes aware that a borrower is represented by counsel, we place the attorney's address in the mailing address space in the system so that notices are mailed to the attorney, and not the borrower. We also code the account to indicate the borrower is represented. In this case, when the February 11, 2013 letter went, the system did not identify Plaintiff as having an attorney. The records also show that Bayview and Plaintiff had been in frequent and direct contact for over a year, and Bayview believed it had consent to contact Plaintiff directly.

6. Bayview's letter to Plaintiff dated February 7, 2013 was issued in error to the extent the loan was already in the process of being modified. Bayview's business records indicate that Plaintiff called Bayview on February 11, 2013 concerning the letter and status of her modification. Bayview's business records include the following comment entries from February 11, 2013, indicating the error was explained and corrected:

02/11/2013	MSP Comment	CONTACT MADE WITH CUSTOMER CONTACT MADE WITH CUSTOMER OUTBOUND CALL; 206 [REDACTED]; SPOKE WITH SHE READ MIRANDA. APPOLOGIZED RECEIVING LETTER IN ERROR. AGREED HER FILE IS IN THE PROCESS OF CONVERTING AND SHOULD HAVE NOT BE ASSIGN BACK TO ASSET MANAGEMENT. SHE ACCEPTED OUR APPOLIGY AND I ADVISE WOULD ALSO FOLLOW UP WITH NICOLE TOMORROW TO MAKE SURE THAT IS THE CASE.	JOHNORSUTO
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02/11/2013	MSP Comment	CONTACT MADE WITH CUSTOMER CONTACT MADE WITH CUSTOMER LETICIA CALLED IN, WANTE DTO KNOW WHEN SIGNED COPY OF NOTE WOULD BE SENT BACK, GAVE HER CENLAR'S NUMBER AND TOLD HER TO ASK THEM, ASKED WHY CREDIT IS BEING REPORTED AS REPO/FORECLOSURE, TOLD HER SHE'D HAVE TO TALK TO CENLAR, ASK WHY SHE GOT LETTER FROM NEW AM INTRODUCING HIMSELF AS HER NEW AM AND TOLD HER IT WAS A SYSTEM ISSUE THAT CENLAR'S COMPUTER SENT BACK THE COMPLETED DOCS AND IT WAS REASSIGNED	RYANFINNIGA N
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7. I declare under the penalty of perjury under the Laws of the State of Washington that the foregoing is true and correct.

DATED November 17, 2014

BAYVIEW LOAN SERVICING, LLC

/s/ Ernesto Irurzun

By: Ernesto Irurzun

Its: Vice President